

### **REMARKS/ARGUMENTS**

Claims 1, 3, 4, 37, 45, 49, 98-105, 111, 114-121 and 123 are pending in the application and stand rejected by the Examiner. Claim 115 has been amended to correct an inadvertent typographical error. Dependent claims 141-143 are newly presented to more particularly point out embodiments of Applicants' invention. Support for these claims is found in the Application as filed; no new matter has been added. See the Specification, e.g. at pages 18-23; and Figs. 4, 5 and 10.

#### **Double Patenting Rejection**

The Examiner has rejected claims 1, 3, 4, 37, 45, 49, 98-105, 111, 114-121 and 123 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-49 of U.S. Patent No. 6,940,988. Applicants submit herewith a Terminal Disclaimer in compliance with 37 CFR 1.321, thus obviating the rejection.

#### **Rejections under 35 USC § 112**

Claims 37 and 118-119 have been rejected under 35 USC § 112 as being unascertainable. Applicants have amended the claims to obviate the rejection.

#### **Rejections under 35 USC § 102**

Claims 1, 3, 37, 45, 49, 98-100, 111, 116-121 and 123 are rejected under 35 USC § 102(e) as being anticipated by Shennib et al. (U.S. Patent No. 5,701,438, herein in after Shennib). Applicants respectfully traverse the rejection. Contrary to the assertions in the office action, no where does Shennib teach or suggest a hearing device adapted to be inserted entirely within a wearer's ear canal medially past the canal aperture for long-term wear. Instead, portions of Shennib's device laterally protrude out of canal aperture 24 as is shown in Figs. 4 and 30 of Shennib.

However, in order to expedite prosecution and without acquiescing to the propriety of the Examiner's rejection Applicants have amended claims 1 and 98 to overcome the rejection. Amended claim 1 now recites that the flexible connector comprises a flexible film

with the connector encapsulating a portion of at least one of the receiver assembly, the battery assembly or the microphone assembly. Support for this amendment is found in the Application as filed, see the Specification e.g., page 18, lines 13-21; page 19, line 15 to page 20, line 2; and Figs. 5 and 10. No where does Shennib teach or suggest such a limitation. Accordingly, withdrawal of the rejection of claim 1 and dependent claims 4, 37, 45, 49 is respectfully requested.


Claim 98 has been amended to recite that the core assembly and sealing retainer are adapted to position a medial end of the core assembly within 2 mm of the tympanic membrane for long-term wear of the hearing device in the ear canal. Support for this amendment is found in the Application as filed, see the Specification e.g., page 36, lines 8-11. No where does Shennib teach or suggest such a limitation. Accordingly, withdrawal of the rejection of independent claim 98 and dependent claims 99-105, 111, 114-121 and 123 is respectfully requested.

### CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,

  
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